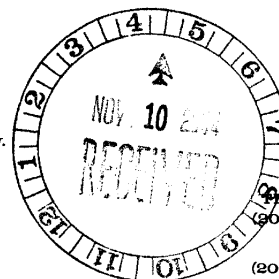


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November 10, 2004

VIA HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC 20423

ENTERED
Office of Proceeding

NOV 10 2004

Part of
Public Record

Re: STB Finance Docket No.AB-156 (Sub-No. 25X),
Delaware and Hudson Railway Company, Inc. --
Discontinuance of Trackage Rights -- Between Lanesboro,
PA and Buffalo, NY, In Susquehanna County, PA and
Broome, Tioga, Chemung, Stueben, Allegany, Livingston,
Wyoming, Erie and Genessee Counties, NY

Dear Secretary Williams:

Enclosed for filing on the record of the referenced proceeding please find an original and ten copies of the Reply of The State Of New York to Petition for Exemption.

An additional copy of this Reply also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your prompt attention to this matter.

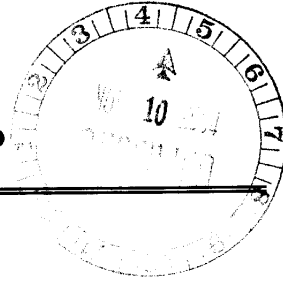
Sincerely,

Kelvin J. Dowd
An Attorney for
The State of New York

KJD:dmb
Enclosure

cc: Mr. David Konschnik
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DELAWARE AND HUDSON RAILWAY)
COMPANY, INC. -- DISCONTINUANCE OF)
TRACKAGE RIGHTS -- BETWEEN)
LANESBORO, PA AND BUFFALO, NY, IN)
SUSQUEHANNA COUNTY, PA AND BROOME,)
TIOGA, CHEMUNG, STUEBEN, ALLEGANY,)
LIVINGSTON, WYOMING, ERIE AND)
GENESSEE COUNTIES, NY)

Docket No. AB-156 (Sub-No.25X)

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Office of Proceedings

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Public Record

**REPLY OF THE STATE OF NEW YORK TO
PETITION FOR EXEMPTION**

Pursuant to the Board's Order in this proceeding served October 21, 2004,
The State of New York, acting by and through the New York State Department of
Transportation ("NYDOT"), replies to the Petition For Exemption submitted on or about
October 1, 2004 by the Delaware & Hudson Railway Company, Inc. ("D&H"), as
follows:

1. By its Petition, D&H seeks an exemption pursuant to 49 U.S.C. § 10502
from the prior approval requirements of 49 U.S.C. § 10903, in connection with the
proposed discontinuance of D&H overhead trackage rights over approximately 229.55
miles of railroad owned and operated by Norfolk Southern Railway Company ("NS"),
between Buffalo, NY and Lanesboro, PA.
2. The D&H service discontinuance is one of a series of related transactions
affecting rail service in central and western New York, which include grants of trackage

rights between NS and D&H and between NS and D&H's parent, the Canadian Pacific Railway Company ("CP"),¹ and haulage rights agreements between D&H and NS whereunder, *inter alia*, NS would handle freight cars and trains for D&H's account between Buffalo and Binghamton, NY, as a substitute for the direct service previously provided by D&H using its own locomotives and the overhead trackage rights that are the subject of D&H's Petition.

3. As a result of the Board's Orders served October 7, 2004 and October 8, 2004 in *F.D. No. 34561* and *F.D. No. 34562, supra*, NYDOT had the opportunity to review the transactional agreements between and among D&H, CP and NS that will govern the exchanges of trackage rights and the provision of haulage rights described generally in the D&H Petition and the related trackage rights exemption notices. NYDOT is satisfied that if implemented in accordance with the operative agreements, the subject transactions should not result in a reduction in freight transportation options currently available to D&H shippers, or a diminution of the current capabilities of carriers other than NS to interchange traffic with D&H.

4. In considering whether to exercise its exemption authority under 49 U.S.C. § 10502, NYDOT respectfully urges the Board to be particularly mindful of the statutory

¹See F.D. No. 34561, *Canadian Pacific Railway Company – Trackage Rights Exemption – Norfolk Southern Railway Company -- Buffalo, NY*, and F.D. No. 34562, *Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware & Hudson Railway Company, Inc. – Between Saratoga Springs, NY and Binghamton, NY*.

admonition that the exemption power not be used to relieve a rail carrier of its obligation to protect the interests of its employees. 49 U.S.C. § 10502 (g). No less than those of the shipping public and the carriers themselves, the interests of New York-based railroad employees should be recognized in the Board's deliberations over the D&H Petition.


Respectfully submitted,

THE STATE OF NEW YORK

OF COUNSEL:

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Date: November 10, 2004

By: William L. Slover
Kelvin J. Dowd 
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Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2004, I caused copies of the foregoing Reply to be served on counsel for the parties of record in this proceeding by hand delivery, addressed as follows:

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